

**UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

In re:

MICHAEL K. HERRON,

Debtor.

Adv. Proc. No. 20-02132-TPA

Related to Bankr. No. 19-24527-TPA

Chapter 11

Related to Document 3 ( amended complaint)

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WELLS FARGO BANK, N.A., as Trustee for  
BANC OF AMERICA ALTERNATIVE  
LOAN TRUST 2005-11 MORTGAGE  
PASS-THROUGH CERTIFICATES,  
SERIES 2005-11,

Movant/Defendant,

v.

MICHAEL K. HERRON,

Respondent/Plaintiff.

**DEFENDANT'S MOTION TO DISMISS UNDER  
F.R.C.P. 12(b)(6)**

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Defendant WELLS FARGO BANK, N.A., as Trustee for BANC OF AMERICA ALTERNATIVE LOAN TRUST 2005-11 MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2005-11, by and through its undersigned counsel, hereby moves this Court pursuant to Federal Rule of Civil Procedure 12(b)(6) for the Dismissal and Summary Judgment of the instant complaint with prejudice in Favor of the Defendant as to all counts in Plaintiffs' complaint.

1. F.R.C.P 12(b)(6) states in part:

b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:..... (6) failure to state a claim upon which relief can be granted.... A motion making any of these defenses shall be made before pleading if a further pleading is

permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. **If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment** and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

2. Michael K. Herron, is a natural person residing at 1276 West Tacoma Street in Hernando, Florida 34442-3237 and Debtor in this Chapter 11 case.
3. Wells Fargo Bank, N.A., as Trustee for Banc of America Alternative Loan Trust 2005-11 Mortgage Pass-Through Certificates, Series 2005-11, is a business entity organized and existing under Delaware law.
4. The Defendant financed the Plaintiff's real property located at 1122 SE Kings Bay Drive in Crystal River, Florida 34429 (the "Subject Premises/Collateral"), securing repayment of its loan with the Subject Premises/Collateral.
5. On November 21, 2019, the Plaintiff filed a voluntary bankruptcy petition under chapter 11 of the United States Bankruptcy Code.
6. According to the proof of claim that the Defendant's mortgage servicer, Nationstar Mortgage LLC d/b/a Mr. Cooper, filed in the referenced bankruptcy case, the Defendant has a secured claim of \$1,279,719.30 (See Exhibit 3. attached to Accompanying Memorandum of Law).
7. The original deed of trust/mortgage was signed on October 6, 2005 and recorded on October 18, 2005 in the office of Office of the Clerk of the Court- Citrus County in

- the amount of \$1,000,000.00 by the Debtor (See Exhibit 1. attached to Accompanying Memorandum of Law).
8. The Debtor signed the original note on the same day on October 6, 2005 (See Exhibit 2. attached to Accompanying Memorandum of Law).
  9. The Debtor has obtained an appraisal from a certified and licensed Florida appraiser in the which values the property at \$316,000 (See Exhibit 5. attached to Accompanying Memorandum of Law).
  10. The reason for the decreased value is that the structure was badly damaged by a hurricane in 2016 (See Exhibit 9. attached to Accompanying Memorandum of Law).
  11. The Debtor deeded the property to Adele Benjamin, LLC, a Florida Limited Liability company, by Deed dated September 11, 2006 and recorded on November 20, 2006 in the Citrus county Clerk of the Circuit Court (See Exhibit 4. attached to Accompanying Memorandum of Law).
  12. The Debtor admits in discovery propounded that he is not the record owner. The Debtor is the Managing Member of Adele Benjamin, LLC (See Exhibit 9. attached to Accompanying Memorandum of Law).
  13. Adele Benjamin, LLC is incorporated under the laws of Florida and is in good standing (See Exhibit 7. and 8. attached to Accompanying Memorandum of Law).
  14. The structure on the property was demolished after December 6, 2017, after a Citrus County Notice of Commencement of Demolition was accepted and signed by Michael Herron, as the authorized officer of Adele Benjamin LLC (See Exhibit 6. attached to Accompanying Memorandum of Law).
  15. Florida law states that property held by an LLC is the property solely of the LLC.

16. The subject premises has been solely owned the LLC since 2006.
17. The LLC is not the Debtor in this bankruptcy.
18. Therefore, the subject property is not property of the estate.
19. Therefore, the Court does not have subject matter jurisdiction of this property under Title 11.
20. Summary Judgment under Rule 12(b)(6) should therefore be granted in Favor of the Defendant for failure to state a claim upon which relief can be granted.

WHEREFORE, for the reasons set forth at length in Moving Defendant's Memorandum of Law Wells Fargo Bank, N.A., As Trustee For Banc Of America Alternative Loan Trust 2005-11 Mortgage Pass-Through Certificates, Series 2005-11 respectfully requests that this Honorable Court grant is dismiss the Plaintiff's Complaint, with prejudice.

April 6, 2021

Respectfully Submitted,

/s/ Kristen D. Little

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